

imprisonment for a term not exceeding two years or to both. He also contended that he had complied with the law by applying for a licence and that the rejection came too late for him to cancel the function as he had invited foreign dignitaries to attend it.

The second appellant also had four previous convictions, having been convicted jointly with the first appellant in respect of the Penal Code Offences. His counsel accordingly submitted that the fine of \$3,500 was manifestly excessive and wrong on the same ground relied upon by the first appellant. Counsel also claimed that his client did not know that a licence was required or that the licence had not been obtained when he addressed the gathering, and that the second appellant had merely made a welcoming speech of about one to two minutes, and that, unlike the first appellant, the second appellant was not told by the police to refrain from speaking.

The deputy public prosecutor's submission was that the sentence was not manifestly excessive for the following reasons: (a) that the appellants showed a brazen disregard of the law and had committed the offence knowing full well that they did not have a licence; (b) that the police had been inconvenienced in that they had to perform crowd control duty; and (c) that the appellants in committing the offences had failed to pay the licence fees. The deputy public prosecutor declined to make a submission on whether this court should, for the purpose of determining the appropriateness of the sentences, have regard to the decision of the Privy Council in *Jeyaretnam v Law Society of Singapore*.⁵ Instead, he submitted that the said convictions were irrelevant to the present conviction and that he did not wish to rely on them for the purpose of these appeals on sentence. In view of the stand taken by the deputy public prosecutor and the fact that he has not addressed me on the status of these convictions, I do not propose to say more about them. I shall disregard them as irrelevant for the purpose of determining the appropriateness of the sentence under appeal.

On this basis, the first appellant had one previous conviction for an unrelated offence and the second appellant had no previous conviction. The only other negative factor against the appellants was that they had deliberately broken the law. That, of course, is not an exceptional factor as it is normally present in most convictions. It is a factor which is more important when imposing sentences for subsequent offences of a similar nature. There were no other adverse factors that could be put on the scale against the appellants. There was no evidence that any disorderly conduct or breach of the peace had occurred at or in connection with the addresses made by the appellants or that any member of the public or any of the residents of the neighbouring premises had been unduly inconvenienced, or that their peace of mind or tranquility unduly disturbed by this infraction of the law.

A Taking into account all the circumstances of this case, including the nature of the offence and conduct of the appellants, I am of the view that a fine of \$1,500 would be the appropriate sentence to be imposed on each of them.

The appeals against conviction are dismissed and the appeals against sentence are allowed to the extent that the fines are reduced to \$1,500 in respect of both appellants.

Order accordingly.

Solicitors: *Ling & Co.*

Reported by *Terence Tan Bian Chye*

Abdul Salam bin Mohamed Salleh v Public Prosecutor

D HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL
NO 185 OF 1987
CHAN SEK KEONG J
5 OCTOBER 1989

E *Criminal Law — Causing disappearance of evidence — Burden of proof on offender to explain why evidence disappeared — Penal Code (Cap 103, 1970 Ed), s 201 — Criminal Procedure Code (Cap 68, 1985 Ed), s 256(b)(iii) — Misuse of Drugs Act (Cap 185, 1985 Ed), s 6(a)*

F *Criminal Procedure — Notes of evidence of trial judge faulty — Whether accused convicted on a non-existent charge — Whether there was miscarriage of justice*

G This was an appeal by the appellant against his conviction and sentence of four months' imprisonment on a charge under s 201 of the Penal Code (Cap 103, 1970 Ed) that he had, while a sergeant investigating drug abuse attached to the Tanglin Police Station, caused evidence of the commission of an offence to disappear by deliberately not enclosing a statement recorded under s 120 of the Criminal Procedure Code (Cap 68, 1985 Ed) of an accused person.

H The trial judge disbelieved the reasons given by the defence for the disappearance of the evidence and convicted the appellant. The appellant appealed against both conviction and sentence. The first and main ground of appeal was that there was a miscarriage of justice in that the appellant had been convicted on a charge which had not existed or had not been framed or read or explained to the appellant.

I **Held**, dismissing the accused's appeal:

(1) The manuscript notes of evidence of the whole trial are irrefutable evidence that the s 201 charge to which the appellant had claimed trial had never been amended, that the defence was called on that charge and he was convicted on that charge.

(2) The appellant submitted that the trial judge had failed to explain how he had recorded an application by the DPP to amend the original charge when there was none. The court accepted this as a valid criticism. But the relevant question before the court is not why he did it, but whether this unexplained occurrence had in any way influenced his subsequent

conduct of the trial so that it would not be safe to allow the conviction to stand. The court was not persuaded that there was any miscarriage of justice.

(3) The court did not agree with the submission that the sentence was manifestly excessive. The trial judge had taken into account all the mitigating factors. The appellant was a police officer entrusted with the responsible job of investigating drug offences. Instead, he did the opposite. Public confidence in policing and the investigating of crime will diminish unless police officers perform their duties without fear or favour.

Cases referred to

- 1 *Ng Ee v PP* [1941] MLJ 180 (refd)
- 2 *Lew Cheok Hin v R* [1956] MLJ 131 (refd)
- 3 *Sivalingam v PP* [1982] 2 MLJ 172 (refd)
- 4 *Loh Kwang Seang v PP* [1960] MLJ 271 (distrd)
- 5 *Habee Bur Rahman v PP* [1971] 2 MLJ 194 (distrd)
- 6 *Anverkhan Mahamadkhan v Emperor* (1921) 22 Cr LJ 609; AIR 1921 Bom 115 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 256(b)(ii)
Misuse of Drugs Act (Cap 185, 1985 Ed) s 6(a)
Penal Code (Cap 103, 1970 Ed) s 201

Mohideen Rubin for the appellant.
Bala Reddy for the respondent.

Cur Adv Vult

Chan Sek Keong J: This is an appeal by the appellant against his conviction and sentence of four months' imprisonment on the following charge:

You, ... are charged that you, on or about 18 May 1984, being a sergeant investigating drug abuse attached to the Tanglin Police Station, knowing that an offence under s 6(a) of the Misuse of Drugs Act (No 5 of 1973) had been committed on 17 May 1984 at Blk 3 Margaret Close, #07-14 by one Razali bin Bakar, which is an offence punishable with imprisonment not exceeding ten years, caused evidence of the commission of that offence to disappear by deliberately not enclosing the statement recorded under s 120 of the Criminal Procedure Code from the said Razali bin Bakar on 18 May 1984 which implicated himself in that offence in the investigation papers, Ref D/1191/84, with the intention of screening him from legal punishment and you have thereby committed an offence punishable under s 201 of the Penal Code (Cap 103, 1970 Ed).

Section 201 provides as follows:

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to a fine, and if the offence is punishable with imprisonment for any term not extending to ten

years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

The facts were shortly as follows. On 17 May 1984, the police raided a house at Block 3 Margaret Close, #07-14 and arrested one Razali bin Bakar (PW2) for consumption of drugs. A stick of vegetable matter (which was subsequently analyzed to be ganja) was found in the kitchen cabinet drawer. Razali confessed to Sgt Toh that the stick of ganja belonged to him. Thereafter, on information given by Razali, the police raided another house and also arrested three other persons for the same type of offence. Sgt Toh brought the arrested persons back to the Tanglin Police Station where he handed them to the appellant who was then a sergeant in charge of drug abuse and all drug cases in that division. Sgt Toh lodged an arrest report at about 7.40pm; he also informed the appellant that Razali had confessed to the possession of cannabis.

A urine sample was taken from Razali after which he and his friend were placed in the lock-up until 1am when the appellant took a statement from him. This statement (P3) reads as follows:

I, the above-named, is single and residing with my mother at the above-stated place. I am a workers brigade attached at Hougang worksite.

On 17 May 1984 at about 3pm, whilst I was at home with my younger brother age about three years old, a party of CNB officers raided my house, they discovered one stick of cannabis from the drawer of my cupboard and arrested me together with two other Chinese friends who had just paid me a visit a few minutes before the CNB officers' arrival.

I wish to state that the stated stick of cannabis belong to me but had forgotten where and when I had bought it.

That is all I have to say.

The statement was read over and explained in the Malay language and I confirmed it true and correct.

Recorder

Razali Bin Bakar
sgd

A Salam Salleh
sgd

At 1.10am, the appellant took a second statement (P4) from Razali. This statement reads as follows:

I, the above-named, is single and residing with my mother, together with brothers and sisters at the above-stated address.

2 On 17 May 1984 at about 3pm, whilst I was at home with my three year old brother, a party of CNB officers raided my house and they discovered a roll of ganja from the cupboard drawer which was shared by three brothers, besides that some of my friends and even my brothers' friends have access to the said cupboard as we have a big family staying in the one-room flat.

3 I admit I have taken other drugs but never smoked or taken any ganja. The stated ganja does not belong to me and

I do not know who put it inside the stated drawer. I admitted to the CNB officers as I was afraid that they might hit me if I did not admit at that time.

That is all I have to say. The statement was read and explained in the Malay language and I confirmed it is true and correct.

Razali bin Bakar
sgd

Recorder
A Salam Salleh
sgd

After taking the statements, the appellant put them in his drawer, which was his practice. Razali was then released on bail. The stick of ganja and Razali's urine sample were also sent for analysis. Three or four days later, the appellant prepared the Investigation Paper file ('the IP'). He put P4 into the IP but not P3. On or about 29 May 1984, the appellant informed Razali by letter that the urine sample was found to contain morphine and he was asked if he wished to have a second test of his urine sample. He declined the request on the same day. On the same day also, the appellant received from the Department of Scientific Services a report that the stick of vegetable matter was cannabis. On 13 June 1984, the appellant took a statement from Razali under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed). In that statement, Razali confessed to consumption of morphine. On the same day, the appellant prepared a document called 'statement of the facts' in which he wrote that a charge for possession of the drug was not tendered as there was insufficient evidence as the exhibit was discovered in a cupboard shared by three brothers and their close friends and, further, Razali had admitted to consumption of morphine and not cannabis. Razali was charged in court on 15 June 1984 for the offence of consumption of morphine.

On the following day, 16 May 1984, the appellant submitted the IP to his superior officer (PW3) who, on the basis of its contents, agreed with the appellant's recommendation not to proceed with the charge for possession of cannabis. For reasons not disclosed at the trial, the appellant was investigated in connection with the way he handled the investigation of Razali's case and P3 was recovered from his desk drawer on 27 June 1984. The appellant was then charged with an offence under s 201 of the Penal Code (Cap 103, 1970 Ed) and was convicted.

At the trial, Razali gave evidence for the prosecution. He said that P3 was the true statement and that he signed P4 although it was not the statement given by him. He said he was asked to sign P4 and he signed. He also said that he did not know the appellant and that he did not know of any reason why the appellant asked him to sign P4. He admitted that his mother, who was at the police station that night, questioned him about the stick of ganja, but that he denied having told her that he admitted to possession because he was afraid of the police officer who raided the

house and that he wanted to protect his brothers. He also said that he was a drug addict. The appellant's testimony was that after he had taken P3, he overheard Razali telling his mother he had admitted to possession of the stick of ganja because he was afraid and the mother scolded Razali for having done so. The appellant then called Razali and asked him why he had made the admission and Razali replied that he was afraid of being assaulted. The appellant then decided to take the second statement. The appellant also testified that he believed P4 because Razali gave it calmly, whereas he was not calm when he gave P3. He also believed P4 because Razali had told him that he did not smoke ganja as it was not his 'standard'. He also said that a doubt was created in his mind because the arrest report stated that the ganja was not found in the physical possession of Razali. He said he had no intention to screen Razali but to find out the truth. He explained that he did not put both P3 and P4 into the IP because he did not want to confuse his superior officer who was new to the job. He kept P3 in the drawer in case it was needed. Later, under cross-examination, he said he did not put P3 in the IP because he had forgotten about it, and then, after questioning admitted that he had never intended to put P3 into the IP because he believed P4. He said that if he had any intention to screen Razali, he would not have kept P3. He also said that he had not seen Razali's mother since 17 May 1984.

Razali's mother testified on behalf of the appellant. Her story supported that of the appellant. Nevertheless, the trial judge disbelieved the evidence adduced by the defence and convicted the appellant. In his grounds of decision, the trial judge gave the following reasons for not believing the appellant:

I considered the evidence adduced on behalf of the accused but did not believe him. He had given so many reasons as to why he did not include exh P3 in the Investigation Papers when it is quite clear from the evidence that the accused had no discretion to choose which statements to include or exclude from the Investigation Papers. These reasons have been set out earlier, namely:

- (1) he was not convinced of the truth of exh P3;
- (2) because the head investigator was a new person and he did not want to confuse him with the two statements;
- (3) he kept the statement and would forward it should there be a need for it;
- (4) Razali hesitated before signing it and thereby creating a doubt;
- (5) because Razali had told him it was not his standard to smoke ganja.

He also gave another reason in that he forgot about exh P3.

After the filing of the notice of appeal, counsel for the appellant was furnished with the notes of evidence and grounds of decision of the trial judge. The notes of evidence showed the following entries made on the second day of the trial when the defence was called:

DPP: Applies under s 163 CPC to amend charge under s 204 Penal Code.

Court: Defence called on amended charge.
Two courses explained to accused in ordinary language.
Elects to give evidence from the witness box.

The trial judge, after reviewing the evidence and the submissions of counsel and of the DPP on whether or not the defence should be called, said as follows:

In the circumstances I called on him to make his defence on an amended charge under s 204 of the Penal Code. He elected to give evidence from the witness box.

After reviewing the evidence of the appellant, the trial judge found as follows:

The court considered his evidence carefully and was satisfied that he had not raised a reasonable doubt on the prosecution's case. He had given a host of reasons which I rejected. In the circumstances I found him guilty of the amended charge and convicted him accordingly.

It is common ground in this appeal that the references to s 204 in the notes of evidence were a mistake as no application had been made by the DPP to amend the charge at any time. Accordingly, the first ground of appeal set out in the petition of appeal was that there was a miscarriage of justice in that the appellant had been convicted on a charge which had not existed or had not been framed or read or explained to the appellant.

Prior to the hearing of the appeal, the DPP had written to the trial judge to clarify his entries in the form as typed. This was rather unfortunate, as the trial judge, not being in a position to contradict the typed record, was led to explain that he had intended to amend the charge at the end of the prosecution's case but had inadvertently failed to do so. Thus, when this appeal came on for hearing, counsel for the appellant was able to submit that the conviction under s 204 must be quashed and no conviction under s 201 could be substituted for it since the trial judge's explanation meant that he found no offence under s 201. The DPP submitted that a perusal of the grounds of decision showed that, in spite of the references to s 204, the trial judge had actually considered the evidence and the ingredients of the offence on the basis of a charge under s 201 and not s 204 of the Penal Code. Accordingly, he submitted that the court could and should act under s 256(b)(ii) of the Criminal Procedure Code and substitute a conviction under s 201 of the Penal Code. The DPP referred to the following cases where the courts in Singapore and Malaysia had exercised the powers under s 256(b)(ii) and the corresponding provision in the Malaysian Criminal Procedure Code, viz *Ng Ee v PP*,¹ *Lew Cheok Hin v R*,² and *Sivalingam v PP*.³

It is however not necessary for me to consider the scope of s 256(b)(ii) of the Criminal Procedure Code in the light of these authorities because of what developed sub-

sequently. After I had reserved judgment, the DPP was able to produce a copy of the manuscript notes of evidence of the trial judge and also another written explanation from the trial judge that his first explanation was in error in the light of the manuscript notes. Counsel for the appellant had the opportunity of perusing the said notes. The handwriting is legible. Although counsel attempted to argue otherwise, but I am satisfied that he was merely trying his best for his client. The entries read:

DPP: Applies under s 163 CPC to amend charge under s 204 Penal Code.

Ct: Defence called on *original* charge. (My emphasis.)
Two courses explained in ordinary language.
Elects to give evidence from the witness box.

The manuscript notes of evidence of the whole trial are, in my view, irrefutable evidence that the s 201 charge to which the appellant had claimed trial had never been amended, that the defence was called on that charge and after the appellant and his witness gave evidence in connection with that charge, he was convicted on that charge.

Counsel for the appellant, however, objected to this attempt by the trial judge to supplement and to add explanations to the appeal record as irregular. He urged the court to disregard the explanations of the trial judge and decide the appeal on the basis of the typewritten appeal record. He referred to *Loh Kwang Seang v PP*⁴ and *Habee Bur Rahman v PP*.⁵ In the first case, Rigby J held that the conduct of the trial judge, in attempting to add 27 lines of typewritten material to a page in his grounds of decision after it had been signed by him and the same served on the appellant's counsel was irregular and improper. However, Rigby J also decided that such conduct could not be said to have occasioned a miscarriage of justice or such as to warrant or require or even justify the court in saying that the trial should be regarded as a nullity: the appellate court would simply consider the original judgment as it stood.

The case of *Habee Bur Rahman*⁵ was concerned with an entirely different point. In that case, counsel for the appellant sought to introduce by affidavit, evidence which he said had been omitted in the record of appeal. The court disallowed the application on the ground that there was no provision in the Criminal Procedure Code to allow the filing of affidavits unless so ordered by the court.

In my view, Rigby J's decision on the point before him is not relevant to the point before me. Here, the notes of evidence or the grounds of decision are not being supplemented. Clearly, a typographical mistake had been made and the trial judge had given contradictory explanations because he was initially shown the typewritten notes. I am wholly satisfied that this would not have happened if he had, at the inception, seen his manuscript notes of evidence. Accordingly, I am unable to accept the submission that I should disregard the manuscript notes in this part of the notes of evidence.

I should also point out that the trial judge did not, at the time he convicted the appellant, give any grounds, oral or written. The grounds of decision were written after the appellant had given notice of appeal. Since the manuscript notes of evidence showed that the defence was called on the original charge, the inference to be drawn must be that when the trial judge convicted the appellant, the charge he had in mind was the charge before him, viz that under s 201. The confusion with a s 204 charge came later when he came to write his grounds of decision on the basis of the typewritten appeal record. I have no doubt that, going by the correct notes of evidence, the appellant was convicted under s 201 and not s 204 of the Penal Code.

Counsel for the appellant further submitted that, in any event, the trial judge had failed to explain how he had recorded an application by the DPP, when there was none, to amend the original charge. I accept this as a valid criticism of the trial judge's conduct in this respect. But the relevant question before me is not how or why he did it, but whether this unexplained occurrence had in any way influenced his subsequent conduct of the trial so that it would not be safe to allow the conviction to stand. I have given anxious deliberation to this aspect of the case, but I am not persuaded that there was any miscarriage of justice on account of this aberration. Upon a careful perusal of the notes of evidence on this part of the trial, I have come to the conclusion that the trial was subsequently conducted wholly on the basis of a charge under s 201. The appellant testified that after he had taken the first statement (P3) of the appellant, he took another statement (P4) as he had doubts about the truth of the appellant's confession made in the first statement, that he had placed P4 in the investigation file and P3 in his drawer. In his evidence-in-chief, he said:

It does not occur in my mind to screen him. I only wanted to seek the truth.

When the appellant was cross-examined, the following questions and answers were recorded by the district judge:

Q: You kept P3 in the drawer to screen Razali from being punished for offence of possession?

A: No.

Q: And at that time you knew an offence had been committed by Razali?

A: No.

Q: And you caused P3 to disappear?

A: No.

Q: And you had already made up your mind not to charge him for possession?

A: No.

In re-examination, the following question and answer were recorded:

Q: Were you screening Razali or recording fairly?

A: I can say I was being fair to Razali.

At the end of the case for the defence, counsel for the defence submitted that the appellant 'had no criminal

A intention to cause P3 to disappear to screen Razali'. The DPP submitted otherwise. The trial judge adjourned the proceedings to the following day when he convicted the appellant.

B On the basis of the correct notes of evidence, I am satisfied that no miscarriage of justice had been occasioned by the lack of any explanation for the reference to the DPP's application to amend the charge to s 204 since the subsequent proceedings were understood or treated by all parties who were concerned with the trial as proceedings under the original charge.

C I will now consider the other submissions of counsel for the appellant. The first was that the prosecution's case rested primarily on Razali's (PW2's) evidence which was unsatisfactory and totally unreliable as (1) he had asserted that he did not know why he made P4 and that he was not aware of its contents; and (2) he had admitted he was trying to assist the police in the hope that he would not be charged for possession of drugs. The point of the submission would appear to be that the trial judge should have disbelieved Razali's evidence in these two respects. In my view, there is no factual basis for this submission as there is nothing in the grounds of decision to indicate that the trial judge believed this part of the evidence of Razali. Even if the trial judge had disbelieved Razali, it would not advance the appellant's case as all that it means is that Razali has refused to tell the court the truth in relation to the taking of P4. But what was the truth? It was not necessarily that the appellant prepared P4 because he doubted the truth of P3. It could very well have been for the purpose of screening Razali from legal punishment for possession of a controlled drug. What cannot be disputed was the fact that when Razali signed P3, both he and the appellant were aware that Razali had already made an oral confession of possession and the fact that P4 was in effect a retraction of P3.

G In my view, the trial judge was fully aware of the unenviable position that Razali was in and the danger of relying on his testimony. The trial judge did not proceed on the basis that he preferred the evidence of Razali to that of the appellant and of DW2. He proceeded on the basis that the appellant, as the investigating officer, had to explain why he did not include P3 in the IP as was his duty to do so as an investigating officer. The trial judge chose not to believe the evidence of the appellant and that of Razali's mother (DW2) as to why Razali retracted his confession in P3 after hearing and seeing them, but particularly because the appellant had given six reasons for not including P3 in the IP; in other words, the trial judge believed that the appellant was making up the reasons as he was giving evidence. The fact was that at the end of the cross-examination, the appellant admitted that he had only one reason for not putting P3 in the IP and that was because he did not believe P3. The real issue was whether

the appellant had excluded P3 because he believed the confession contained therein was false or because he wanted to screen Razali from legal punishment. The appellant was convicted because he could not give a satisfactory reason for not including P3 in the IP.

Another ground of appeal was that the trial judge was wrong to hold that the appellant had no discretion to decide whether or not to include P3 in the IP on the ground that PW3, his superior officer, had testified that the appellant had 'a discretion to decide a case whether or not to charge or not for consumption or possession of controlled drug based on the facts of the case'. In my view, this complaint is misdirected. What PW3 said was not inconsistent with what the trial judge had held. The appellant could have recommended a charge for possession even if he had included P3 in the IP.

Counsel for the appellant also submitted that P3 was not evidence as contemplated by s 201 of the Penal Code. Counsel referred to the case of *Anverkhan Mahamadkhan v Emperor*⁶ which decided that the expression 'evidence' in s 201 of the Indian Penal Code 'refers, not to evidence in the extensive sense in which the word is used in the Indian Evidence Act, but to evidence in its primary sense as meaning anything that is likely to make the crime evident, such as the existence of wounded corpse or of blood stains, fabricated documents, or similar material objects indicating an offence has been committed'. Counsel submitted that the 'evidence' in this case was the stick of cannabis and not P3. The trial judge held that P3, being a voluntary confession that was admissible in evidence to prove the guilt of Razali, was evidence under s 201. I agree entirely with this conclusion. The stick of cannabis was, in view of the statutory presumption, *prima facie* evidence that an offence had been committed. P3, until disbelieved, was evidence that Razali had committed the offence.

Counsel for the appellant also contended the appellant did not cause P3 to disappear *deliberately*. There is no substance in this argument. The omission to include P3 in the IP was not inadvertent. P3 was omitted knowingly and purposefully and therefore deliberately. In any case, the element of deliberation is not an ingredient of the offence. The essential element is 'cause'.

The last material ground of appeal was that Razali's mother (DW2) corroborated the evidence of the appellant on the circumstances which led him to take P4 and to discard P3 and that this must raise a reasonable doubt as to the intention of the appellant. In my view, although the trial judge did not expressly say whether he believed or disbelieved this evidence, he summarized and adverted to it in his grounds of decision. This must mean that he took such evidence into account before deciding whether or not such evidence raised a reasonable doubt. He decided it did not, and that could only have been due to his disbelieving the evidence of the mother.

A For the above reasons, I am unable to agree that the appellant was wrongly convicted or that there has been a miscarriage of justice.

B As for the appeal on sentence, I do not agree with the submission that the sentence was manifestly excessive. The trial judge had taken into account all the mitigating factors. The appellant was a police officer entrusted with the responsible job of investigating drug offences. Instead, he did the opposite. Public confidence in policing and the investigating of crime will diminish unless police officers perform their duties without fear or favour. This type of offence by a police officer calls for a custodial sentence.

C Accordingly, the appeal against conviction and sentence is dismissed.

Appeal dismissed.

D Solicitors: *Amarjit Rubin & Partners.*

Reported by *Terence Tan Bian Chye*

E **Castle Fitness Consultancy Pte Ltd v Manz**

HIGH COURT (SINGAPORE) — SUIT NO 6964 OF 1985
COOMARASWAMY J
28 SEPTEMBER 1989

F *Civil Procedure — Injunction — Discharge of interim injunction by ex parte application of defendant — Circumstances allowing such application — Need for notice of ex parte application to adversary — Failure to make full and frank disclosure — Consequences of — Queen's Bench Division Practice Direction Part B-3, para 2(c) — Rules of the Supreme Court [UK], O 29 r 1 — Rules of the Supreme Court 1970, O 29 r 1*

G An interim injunction was obtained by the plaintiffs against the defendant which restrained the defendant, his servants or agents from infringing the plaintiffs' rights in an agency agreement entered into between the plaintiffs and Hydra Fitness Equipment Ltd ('HFEL') and from selling products in the territories of Singapore and the surrounding region. The defendant then made an ex parte application to discharge the interim injunction.
H The papers were not served on the plaintiffs. The defendant's solicitors informed the plaintiffs' solicitors of the ex parte application by telex.

Held, discharging the injunction:

I (1) The defendant's solicitors were, in giving notice to the plaintiffs' solicitors of the ex parte application, acting under the now re-activated and established practice in England resulting in what is called 'an opposed ex parte application'. In England, this practice is required by the Queen's Bench Division Practice Direction Part B-3 para 2(c) dated 30 March 1983, in reference to the UK Rules of the Supreme Court O 29 r 1. This practice direction in the Queen's Bench and the Chancery Divisions are the foundation on which English decisions on interim injunctions are based. In view of the highly persuasive authority in